



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1994

Mr. Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR94-556

Dear Mr. Smith:

As counsel for the City of DeSoto (the "city"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 27900.

The city received a request for a memorandum from the city attorney stating the chief executive officer of the city is the city manager. You assert that the city may withhold this information based on sections 552.107 and 552.111 of the Texas Government Code.

You assert that section 552.107 of the Government Code excepts portions of the documents you enclosed for our perusal. These documents are from members of your law firm written in their capacity as counsel for the city. You say "that any legal opinions, attorney-client work product, attorney-client privileged communications, including any memorandums, are excepted from disclosure under Section 552.107 of the Texas Government Code as attorney-client privileged communications."

Section 552.107(1) of the Government Code excepts information from public disclosure if

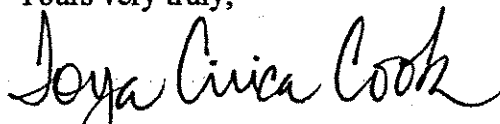
... it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Section 552.107(1) applies to "privileged information" under rule 1.06 of the State Bar Rules. See Open Records Decision No. 574 (1990). Rule 1.05 defines "privileged information" as information of a client protected by the lawyer-client privilege of rule 503 of the Texas Rules of Civil Evidence or rule 503 of the Texas Rules of Criminal Evidence or rule 501 of the Federal Rules of Evidence. Tex. Disciplinary R. Prof. Conduct 1.05(a) (1991), *reprinted* in Gov't Code, tit. 2, subtit. G app. A (State Bar Rules art. X, § 9). Under rule 503(b) of the Texas Rules of Civil Evidence and rule 503(b) of the Texas Rules of Criminal Evidence, "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." A "confidential communication" is a communication "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. Tex. R. Civ. Evid. 503(a)(5).

Not every communication between attorney and client is within section 552.107 of the Government Code. Section 552.107(1) generally applies to confidential client communications and communications of legal advice or opinion. Although the attorney's communication of legal advice or opinion is protected, basically factual communications from attorney to client, or among attorneys for the same client, are not protected. See Open Records Decision No. 574 (1990). In the instant case, the content of the communications at issue contains the legal advice and counsel of the city's attorney. We therefore conclude that pursuant to section 552.107(1) of the Government Code, the city may withhold information in the memoranda that contains legal advice and opinions.

Having concluded that the city may withhold the legal advice and opinions based on section 552.107, we need not address your claims under section 552.111 of the Government Code. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Open Government Section

TCC/KHG/rho

Ref.: ID# 27900

Enclosures: Marked documents

cc: Mr. Mark P. Martin
1409 Frenchman
DeSoto, Texas 75115
(w/o enclosures)